



<b>Policy Memo</b>	
<b>KDHE-DHCF POLICY NO: 2019-12-02</b>	<b>From: Erin Kelley, Senior Manager</b>
<b>Date: December 19, 2019 Revised December 23, 2019</b>	<b>Medical KEESM/KFMAM Reference(s): 8200.2, 8200.3, 8215</b>
<b>RE: HCBS Effective Dates – FE, PD, BI and I/DD Waivers and Reinstatement of HCBS at Review</b>	<b>Program(s): Elderly &amp; Disabled Medical Programs</b>

This memo sets forth instructions for policy changes being implemented in January 2020 regarding Home and Community Based Services (HCBS). Unless otherwise indicated, the following implementation instructions are applicable to all eligibility actions taken on or after January 1, 2020. Revisions to the Medical KEESM will coincide with the release of this memo. Additional information related to the implementation of these changes is available through training material released to eligibility staff.

## **I. EFFECTIVE DATE OF HCBS – FE, PD, BI AND I/DD WAIVERS**

### **A. BACKGROUND**

The HCBS effective date is of special significance as this is the date the consumer is considered eligible for HCBS and services can be provided and reimbursed. Under the current policy, the effective date of services for the Frail Elderly (FE), Physical Disability (PD), and Intellectual/Developmental Disability (I/DD) waivers is dependent on the date the consumer chooses to receive HCBS, if services are expected to begin by the following month. If services are not expected to begin until the second month following the month of choice or later, the date services actually begin is considered the effective date. For the Brain Injury (BI) waiver, the KDADS Program Manager determines the effective date.

### **B. POLICY**

In July of 2019, with [PM2019-06-02](#), changes were implemented for the Severe Emotional Disturbance (SED) and Technology Assisted (TA) waivers that only allow the authorization of HCBS under these waivers to occur on the date in which the eligibility worker takes action to finalize the authorization of coverage. For the FE, PD, BI, and

I/DD waivers, the process of determining the effective date of services remained unchanged. However, effective January 1, 2020, the FE, PD, BI, and I/DD waivers will all follow suit with the effective date changes made for the SED and TA waivers in July 2019.

Services for the FE, PD, BI, and I/DD waivers may begin when an individual has been determined to meet the financial and non-financial eligibility requirements for Medicaid, has been assessed and determined functionally eligible for the requested HCBS waiver, has been found in need of at least one HCBS service offered under the specific waiver requested, and an available spot on the waiver exists. For purposes of this implementation, the individual is found in need of HCBS at the time the functional assessment is completed. This means that for the FE, PD, BI, and I/DD waivers, in addition to the SED and TA waivers, the effective date of HCBS is the date in which final authorization of coverage is issued by the eligibility worker and an ES-3160 is sent to the MCO (except as noted in section B.2 below). No changes have been made to the effective date process for the Autism (AU) waiver as this waiver is already compliant with this policy. [PM2019-06-02](#) subsection III.A. shall continue to be applicable and used concurrently with the issuance of this directive (except where noted in section II below); however, for the FE, PD, BI, and I/DD waivers, the subsections of the cited memo shall only apply to actions taken on or after January 1, 2020.

Note: On November 25, 2019, KDADS was granted final approval by CMS to move forward with the BI Waiver changes formally outlined in [PM2019-06-02](#). These changes include updates to the waiver title from Traumatic Brain Injury to simply Brain Injury to provide more inclusivity as well as to eliminate the lower age limit – allowing services for individuals from birth (0) through age 15. Although the funding was approved for these changes July 1, 2019, KDADS withheld applications for individuals potentially eligible for services under these new guidelines until official approval was received from CMS. Effective December 1, 2019, KDADS began filtering these individuals through the eligibility process. If processing one of these requests after January 1, 2020, the new effective date process as outlined above must be adhered to except as noted in section B.2 below.

## **1. PROVISIONAL PLAN OF CARE**

If the consumer is found eligible for a waiver, their information is sent to the Managed Care Organization (MCO) to establish and/or finalize the person-centered service plan. The person-centered service plan can require additional time to develop and finalize; therefore, the assessing entities (ADRCs, CMHCs, etc.) have begun to develop and provide provisional plan of care/person-centered service plans for individuals newly eligible to receive services under any of the HCBS waivers. Effective with the issuance of this memo, the provisional plan of care must be provided by the assessing entity with the ES-3160 prior to authorization of HCBS. If the provisional plan of care has not been provided with the ES-3160, staff shall contact the assessing entity who screened the consumer and request this documentation. The functional assessment tool is not

required as the ES-3160 shall be used to verify functional eligibility for Medicaid purposes.

## **2. TRANSITION PERIOD**

Applications received prior to January 1, 2020 requesting HCBS for the FE, PD, BI, and I/DD waivers shall follow the previous policy surrounding effective dates of these waivers only in the instance that an ES-3160 has also been received by the agency prior to January 1, 2020. The provisional plan of care/person-centered service plan would not be required in these instances.

## **II. RETROACTIVE REINSTATEMENT OF HCBS AT REVIEW**

This section shall only apply for situations in which HCBS eligibility has been discontinued for failure to return an annual review and/or information necessary to process the annual review. The directive provided in this section supersedes section III.A.2.d of [PM2019-06-02](#).

### **A. BACKGROUND**

Under the current direction of KDADS, if a consumer has been discontinued from HCBS due to failure to return their annual review, services may be reinstated retroactively without a gap in coverage if the review is later received within the review reconsideration period and the consumer is found to be otherwise eligible. However, for the PD and I/DD waivers, if action is taken more than one (1) month following the month of discontinuance, contact with the Waiver Program Manager is required. Effective with the issuance of this memo, the timeframes and criteria for retroactive reinstatement of HCBS at review is changing.

### **B. POLICY**

Effective January 1, 2020, if a consumer has been discontinued for HCBS due to failure to return their annual review and/or information necessary to complete a determination of ongoing assistance during the processing of the review, services may be reinstated retroactively if the review is provided within the review reconsideration period and, if after processing the review and obtaining all necessary information, there are no gaps in eligibility in excess of three (3) months following the month after the month of discontinuance. If a gap in eligibility greater than three (3) months exists, consultation with the KDADS Waiver Program Manager is required to determine if HCBS shall be reinstated. If a gap in eligibility exists but does not exceed three (3) months, HCBS may be reinstated without consultation in the months appropriate. This policy is all-inclusive and shall be applied to all waivers including the PD and I/DD waivers going forward.

Note: This policy only applies if processing cases on or after January 1, 2020 that were discontinued for failure to return an annual review and/or information necessary to

complete the determination of ongoing assistance during the processing of the review and does not include instances of discontinuance between review periods. If processed prior to this date or discontinued in-between review periods, the previous direction shall continue to be applicable and consultation with the Waiver Program Manager shall be required if action is taken more than one (1) month following the month of discontinuance.

Consider the following examples:

- 1) Lucy was receiving HCBS under the I/DD waiver until discontinued 10/31/2019 due to failure to return her annual review. Lucy provides her review and all relevant information within the review reconsideration timeframe on 12/07/2019 and it is processed by a worker on 12/15/2019. Because Lucy's discontinuance was processed prior to 01/01/2020 and was not processed within the month following the end of the review period, HCBS cannot be retroactively reinstated without further consultation with the KDADS Waiver Program Manager due to receiving services on the I/DD waiver.

Note: Had Lucy's discontinuance been processed after January 1, 2020, a reinstatement of services may have been appropriate as this situation would fall into the new policy. Had Lucy been discontinued 12/31/2019, or, if Lucy were receiving services on the FE waiver, a reinstatement of services may still have been appropriate as these situations would fall into the previous direction to reinstate services if the review is processed within the month following the month of discontinuance for the PD and I/DD waivers or if the review was received within the review reconsideration period for the FE, AU, BI, TA, and SED waivers.

- 2) Mark's HCBS was discontinued 01/31/2020 due to failure to return his annual review. On 03/17/2020, Mark provides the agency with his annual review as well as all information necessary to complete a determination for ongoing assistance. Mark's bank statements show that he owned excess resources for the month of 02/2020 and became resource eligible again in 03/2020. Because the period of ineligibility does not exceed three (3) months, the case is rescinded and HCBS is reinstated effective 03/01/2020.
- 3) Margaret was receiving HCBS through a review period of 03/2020. Margaret provides her review timely; however, AVS results were inconclusive so bank statements are requested from Margaret on 04/02/2020 – due 04/14/2020. Margaret fails to provide the requested bank statements; therefore, HCBS was discontinued 04/30/2020. Margaret later provides the requested bank statements on 05/18/2020. Because these statements were provided within Margaret's review reconsideration period, they are accepted, and the discontinuance is rescinded. Margaret's bank statements verify that she is within the applicable resource guidelines. There is no gap in eligibility; therefore, HCBS is reinstated effective 05/01/2020.

- 4) Barry's HCBS was discontinued 01/31/2020 due to failure to return his annual review. Barry provides the agency with a completed copy of his annual review on 04/28/2020, just barely within the review reconsideration period. Barry's review is picked up by an eligibility worker on 06/30/2020 and the case is rescinded. The worker determines that bank statements from the months of 02/2020 through 06/2020 are required before eligibility can be determined. Upon receipt of the bank statements, the worker verifies that Barry exceeds the resource guidelines for the months of 02/2020 through 05/2020 and is ineligible for assistance in these months. Because this period of ineligibility exceeds three (3) months, HCBS shall not be retroactively reinstated without further consultation with the KDADS Waiver Program Manager.

### III. QUESTIONS

For questions or concerns related to this document, please contact one of the KDHE Medical Policy Staff listed below.

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Questions regarding any KEES issues are directed to the KEES Help Desk at [KEES.HelpDesk@ks.gov](mailto:KEES.HelpDesk@ks.gov)